

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

CHI THIEN DUONG,	§	
Petitioner,	§	
	§	
v.	§	C.A. NO. C-05-229
	§	
UNITED STATES OF AMERICA,	§	
Respondent.	§	


**MEMORANDUM OPINION AND ORDER GRANTING
RESPONDENT’S MOTION TO DISMISS**

On December 6, 2005, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 17). Objections were timely filed (D.E. 18). In his objections, petitioner raises *Deal v. United States*, 113 S.Ct. 1993 (1993), in support of his claim of actual innocence. Petitioner objects to “the issue with *Deal* and how it applies to petitioner . . . being left unaddressed” (D.E. 18, p. 2). It is not clear from petitioner’s objections what the “issue with *Deal*” is. In *Deal*, the Supreme Court held that in sentencing under 18 U.S.C. § 924(c)(1), the term “conviction” refers to a finding of guilt by either a judge or a jury. *Deal*, 113 S.Ct. at 1996. *Deal*’s holding does not offer support for petitioner’s claims of actual innocence.

Having reviewed *de novo* the Magistrate Judge’s Memorandum and Recommendation and the pleadings on file, this Court hereby adopts as its own the findings and conclusions of the Magistrate Judge.

Accordingly, respondent's Motion to Dismiss (D.E. 15) is granted.

ORDERED this 28th day of February, 2006.


HAYDEN HEAD
CHIEF JUDGE